

PQR Tiered Findings - July 2010 - NJ Only

TIER	CATEGORY	STATE	AI?	HQ PQR ITEM / PROPOSED ACTION ITEM (AI)	Action Item?	REGIONAL RESPONSE
1	Mercury	All	Yes	Permitting authorities should reassess their procedures for establishing monitoring requirements for mercury, and identify which dischargers would be required to utilize Methods 1631E or 245.7, versus Methods 245.1 and 245.2. These procedures should include the need for using higher precision methods for permit applications, as well as screening and compliance monitoring required in NPDES permits, to ensure that each permit includes the necessary requirements to achieve water quality standards (40 CFR 122.44(d)(1)).	ID # N-09-13.	Region agrees that this is an issue -- in NJ only. This is already covered in action item ID # N-09-13.
1	Sect. 316	All		Region/State permits and fact sheets should explicitly address and document the basis (including the use of mixing zones) for any section 316(a) thermal variances.	No	No new action item needed. Region agrees with finding as it may apply to past NJ and PR permits (not NY). We do not think this should be in the Action Items database. We have discussed the finding with NJ and have also provided comment on one permit (Oyster Creek permit). The Region will only have one permit with a 316(a) thermal variance in PR (the permit that was evaluated for the PQR). Upon permit renewal in 2012, R2 will address this deficiency.
1	Sect. 316	All	Done	Region/States should include section 316(b) cooling water intake structure permit conditions for existing facilities on a BPJ basis, and the basis should be documented in the permit fact sheet.	No	No new action item needed. NY, NJ, and PR (since the PQR) now all have BTA determinations in permits. We are aware that the USVI has been deficient in this area and R2 is already working with USVI to correct this as permits are renewed.
1	Sect. 316	All		Region/States should ensure that section 316(b) is applied to all applicable facilities, not just power generating facilities.	No	No new action item needed. Region will communicate to/remind each of the three delegated states that 316(b) applies to industrial as well as power generating facilities.
1	Sect. 316	All		Region/State permits should reevaluate any section 316(a) variances and section 316(b) requirements at each permit renewal and document the basis in the permit fact sheet. Prior determinations should also be documented in the fact sheet and reflected in the current permit, as appropriate.	No	No new action item needed. Region agrees with finding as it applies to past NJ and PR permits however we do not believe this should be an action item. R2 currently performs these reviews for PR permits. NJ has demonstrated improvement since the PQR in this area. NY is not deficient in this area.

TIER	CATEGORY	STATE	AI?	HQ PQR ITEM / PROPOSED ACTION ITEM (AI)	Action Item?	REGIONAL RESPONSE
1	Bacteria	NJ	Yes	New Jersey should complete its implementation of recently revised pathogen criteria (e.g., move from monitoring for <i>E. coli</i> to putting <i>E. coli</i> limits in permits) in accordance with 40 CFR 122.44(d)(1) and section 303 of the CWA. Region 2 should help oversee this process. (Tier 1)	ID # N-09-11	This is already covered in action item ID # N-09-11.
1	Core	NJ	Yes	New Jersey should use all relevant information (e.g., type of industry or POTW, compliance history, type of receiving water and designated use) and representative, verifiable data of effluent quality in its reasonable potential determinations rather than the current practice of requiring a minimum of 10 effluent monitoring data points.	ID # N-09-12	There is already an action item ID # N-09-12. NJ has a policy that reasonable potential be determined with a minimum of 10 data points. At a minimum, NJ should ensure that permits include requirements for pollutant monitoring that are established at a frequency that is commensurate to assessing reasonable potential pursuant to NJ regulations, and will meet the requirements of 40 CFR 122.44(d)(1) upon permit issuance. The State has committed to making changes to the fact sheet boilerplate to reflect that it uses other information in addition to its policy of using a minimum of 10 data points to evaluate reasonable potential.
1	Core	NJ	Yes	When establishing compliance schedules for new WQBELs in NPDES permits, the State must ensure that it meets the requirements of 40 CFR 122.47. Additional information regarding the 40 CFR 122.47 requirements is provided in a memorandum from the Director of EPA's Office of Wastewater Management to EPA Region 9, dated October 31, 2007.	No	No new action item needed. Since the PQR, New Jersey has received the October 2007 memorandum and is currently ensuring reissued permits with compliance schedules comply with federal requirements. NJ has indicated that it will provide further justification for compliance schedules in its fact sheet.
1	WET	NJ		Permit clarity in New Jersey needs to be improved, specifically when the interim and final permit limits are the same. Further, interim limits under a compliance schedule should lead up to compliance with a final limit as soon as possible, as specified in 40 CFR 122.47.	No	No new action item needed. NJ has indicated that it will provide clearer language in its fact sheets to clarify the terms of compliance schedules.
1	Anti degrad	NJ		When the issuance or reissuance of an NPDES permit allows a new or increased loading of a pollutant, both New Jersey and New York should more clearly document in the fact sheet or administrative record, their determination of whether and how the State antidegradation policy applies. In accordance with 40 CFR 124.56, if the policy applies, the fact sheet or administrative record should describe how the new or increased discharge complies with the State policy.	No	No new action item needed. Every permit issued by NJ follows boilerplate language re: antidegradation and socioeconomic analysis. If they don't meet the AD standards, the permit is not issued. NJ indicated that it would include more information on its antideg analysis in the FS.

TIER	CATEGORY	STATE	AI?	HQ PQR ITEM / PROPOSED ACTION ITEM (AI)	Action Item?	REGIONAL RESPONSE
2	Imp/TMDL	All		Document in the fact sheet whether a receiving water is impaired and whether the facility discharges pollutants of concern (this may require that States make impairment data available to permit writers on a location-specific basis).		
2	Imp/TMDL	All		Clarify State policy regarding consideration of background water quality data in developing water quality-based limits.		
2	Imp/TMDL	All		Document in the fact sheet whether a facility causes or contributes to a relevant impairment.		
2	Imp/TMDL	All		Document in the fact sheet whether a relevant TMDL is final or is under development, and how that TMDL has been or will be addressed in the permit.		
2	Core	NJ		The fact sheet should more fully discuss the designated uses of receiving waters and the overall health of ambient water quality.		
2	Core	NJ		The fact sheet should provide a more thorough explanation of any ambient data that was available and used, along with any dilution/mixing assumptions used in the reasonable potential analysis and development of water quality-based effluent limitations.		
2	Core	NJ		The fact sheet should more fully explain how parameters were chosen for conducting the reasonable potential analysis.		
2	Core	NJ		New Jersey typically uses a background concentration of zero in the calculation of WQBELs. The rationale for doing this should be more fully explained in the fact sheets.		
2	Permit Issuance	NJ	No	New Jersey should more actively update PCS to avoid additional discrepancies and inaccuracies in their permit issuance data.		R2 agrees.
2	Pretreat	NJ	Done	Region 2 should provide HQ with an update of New Jersey's streamlining 2005 regulation modifications, which were due to be adopted Fall 2007.		Since the PQR, and effective January 5, 2009, New Jersey adopted changes to its New Jersey Pollutant Discharge Elimination System regulations that incorporated the 2005 pretreatment streamlining modifications. The New Jersey rule change adopted EPA's revised definition of significant noncompliance by reference. The HQ update table has been revised to reflect these changes.

TIER	CATEGORY	STATE	AI?	HQ PQR ITEM / PROPOSED ACTION ITEM (AI)	Action Item?	REGIONAL RESPONSE
2	Pretreat	NJ	Done	Region 2 needs to ensure that New Jersey has a systematic approach to ensuring that POTWs comply with legal authority requirements.		New Jersey regulations require each approved pretreatment program to submit to NJDEP for review a draft local sewer use ordinance to include the streamlining changes no later than July 4, 2009 -- 180 days from the effective date of these amendments.
2	SSOs	NJ	Done	In New Jersey, permit language requires all non-compliance events to be reported. New Jersey should work with permittee to ensure potentially impacted drinking water suppliers are notified of CSOs, SSOs and bypasses at the treatment plant.		Region 2 believes that adequate notification of the necessary agencies is already in place. When incidents have occurred in the past, notification was made to all pertinent agencies
2	WET	NJ		New Jersey needs to improve documentation and the rational in permits on requirements such as WET limits (acute or chronic - such as interim and final permit limits) and monitoring requirements (including monitoring frequencies, monitoring frequency reductions and species selection) that these requirements will ensure protection of the State's aquatic life protection criteria (WET WQS).		
2	WET	NJ		More and better explanation is needed regarding the strategy behind using PTI/CTI and TIE/TRE studies, including permits with compliance schedules up to and possibly beyond the term of New Jersey permits.		New Jersey has indicated that compliance schedules do not normally go beyond the term of the permit and that during PTI/CTI/TRE/TIE studies compliance is mandated throughout the study.
2	WET	NJ		More explanation is needed for the decisions for WET monitoring frequencies and specifications (e.g., species selection). It is recommended that WET monitoring frequency requirements in permits be increased to ensure the amount and kind of WET data collected are representative of the effluent discharge(s) to support an adequate WET reasonable potential determination in compliance with 40 CFR Part 122.44(d)(1)(ii) regulations (e.g., adequate for assessing effluent variability and species sensitivity).		New Jersey has indicated that monitoring frequency is established based on quantity and quality of data and that it continues to implement WET limits and monitoring requirements which support adequate reasonable potential determinations and are in compliance with 40 CFR 122.44(d)(1). However, New Jersey has also indicated that it has a policy that reasonable potential be determined with a minimum of 10 data points "to ensure that the limit is legally defensible and ensuring that the pollutant assumed present in the effluent is truly representative." Therefore, at a minimum, permits must include requirements for pollutant monitoring that are commensurate with New Jersey's policy of determining reasonable potential during or at permit issuance, in addition to meeting the requirements of 40 CFR 122.44(d)(1).

TIER	CATEGORY	STATE	AI?	HQ PQR ITEM / PROPOSED ACTION ITEM (AI)	Action Item?	REGIONAL RESPONSE
2	Bacteria	NJ		Both States should document in fact sheets the appropriate application of their respective pathogen standards (this is important for New York, since it has three sources of such standards with distinct applicability).		
2	Mixing Zone	NJ		Both New Jersey and New York should more clearly document in their fact sheets or administrative record, how dilution and mixing are considered in the determination of reasonable potential and limit calculations. Documentation should include a discussion of complete versus incomplete mixing and, for incomplete mix situations, the size and appropriateness of mixing zones.		
2	CSOs	NJ	No	Work with New Jersey to incorporate the CSO long term control plan (LTCP) into an enforcement document by 2010, and also discuss potential interim measures until the LTCPs are completed.		Region 2 has had discussions (February 2009) with NJDEP to incorporate development and implementation of LTCPs and we continue to discuss this with the state. This action is already tracked under the SS-1 ACS measure.
2	CSOs	Regional	No	Region 2 should discuss with HQ their "water safe for swimming" goals, and work towards meeting the national goals.		R2 agrees.